

## **REMARKS**

The application includes claims 1-13, 15, and 20-31 prior to entering this amendment. The Examiner objected to Claim 20 for informalities. The Examiner rejected claims 4-5, 9, 23-24, and 26 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The Examiner rejected claims 1-8, 15, 20-25, and 31 under 35 U.S.C. § 103(a) over Baker (U.S. Patent 6,580,694) and Kim (U.S. Patent 6,215,791). The Applicants amend claims 4-5, 9, 20, 23-24, and 26. Claims 1-13, 15, and 20-31 remain in the application after entering this amendment. Applicants add no new matter and request reconsideration.

### **Allowable Subject-Matter**

Applicants thank the Examiner for pointing out allowable subject-matter in the claims. The Examiner objected to claims 9-13 and 26-30 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants elect to rewrite claims 9 and 26 into independent form, placing claims 9-13 and 26-30 in condition for allowance.

### **Claim Objections**

The Examiner objected to Claim 20 for informalities, particularly that the claim includes a computer-readable medium in line 1. Applicants, however, cannot find any informality in this claim, nor does the Examiner point to any reference in the MPEP or CFR that provides a basis for objecting to the claim language “an apparatus comprising a computer-readable medium.” Applicants therefore request the Examiner withdraw the objection to claim 20 be withdrawn.

### **Claim Rejections - 35 U.S.C. § 112**

The Examiner rejected claims 4-5, 9, 23-24, and 26 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants amend claims 4-5, 9, 23-24 and 26, which obviates the Examiner's rejections.

### Claim Rejections - 35 U.S.C. § 103

The Examiner rejected claims 1-8, 15, 20-25, and 31 under 35 U.S.C. § 103(a) over Baker and Kim. Applicants respectfully traverse the Examiner's rejections.

Claim 1 recites *when a lower-priority packet becomes available for transmission across the data link, estimating the transmit time required for transmission of that packet*. Claim 20 recites similar features.

The Examiner alleges Baker's receive process 101 performs the recited estimating. The Examiner further alleges Baker's network 109 discloses the recited data link. The receive process 101, however, receives voice packets 2-9 over the network 109 and then calculates a latency associated with the transmission over the network 109, which is distinctly different than estimating a transmit time for a packet *available for transmission across the data link*. In other words, Baker teaches calculating an actual transmission delay of a packet that has been transferred over the network 109, not estimating a transmission time prior to determine whether the packet can be sent over the recited data link. Thus, Baker does not teach or suggest estimating a transmit time for a packet *available for transmission across the data link*.

Nothing in Kim cures this deficiency, as Kim teaches ordering transmission of cells over an ATM network based on a predetermined maximum allowable delay for the cell (deadline time) within the cell. See, e.g., Kim, col. 4, lines, 40-64. Put differently, Kim schedules transmission of cells solely based on their priority field without performing any estimation of a transmission time for the cell when transmitted over the data link as the claims require. The combination of Baker and Kim therefore fails to render claims 1 and 20 unpatentable, and thus claims 1-8, 15, 20-25 and 31 are in condition for allowance.

Claim 1 further recites *based on the time-critical packet arrival statistics and the estimated transmit time for the lower-priority packet, predicting whether the lower-priority packet can be selected for transmission across the data link without causing substantial delay to a time-critical packet that is not yet available for transmission across the data link*. Claim 20 recites similar features.

The Examiner alleges the combination of Baker and Kim discloses the recited claim features. There is no disclosure in Baker, however, of its receive process 101 having the ability to *predict whether the lower-priority packet can be selected for transmission across its network 109*, much less whether the selection of the recited lower-priority packet can be selected without

*causing substantial delay to a time-critical packet that is not yet available for transmission across the data link.* As discussed above, Baker's receive process 101 receives voice packets 2-9 from the network 109 and calculates a transmission delay or latency after the transmission is complete. That Baker discloses an ability to determine a transmission time after the transmission, does not obviate the fact that Baker does not predict whether the lower-priority packet can be selected for transmission across the data link without causing substantial delay to a time-critical packet that is not yet available for transmission across the data link as the claim requires.

Furthermore, Kim fails to teach or suggest *predicting whether the lower-priority packet can be selected for transmission across the data link without causing substantial delay to a time-critical packet that is not yet available for transmission across the data link* as the claims recite. Kim merely orders its cells based on a priority field that includes a deadline time and an eligible time, and then transmits the cells based on that ordering. Nothing in Kim predicting whether a cell can be transmitted over a data link *without causing substantial delay to a time-critical packet*, much less a time-critical packet that is *not yet available for transmission across the data link*. The combination of Baker and Kim therefore fails to render claims 1 and 20 unpatentable, and thus claims 1-8, 15, 20-25 and 31 are in condition for allowance.


### CONCLUSION

For the foregoing reasons, the applicants request reconsideration and allowance of all pending claims. The applicants encourage the examiner to telephone the undersigned if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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